

REMARKS

Claim Status

Claims 1-12 are pending. Claims 1-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,344,707 to Snyder, hereinafter “Snyder” in view of U.S. Patent No. 3,616,150 to Borge, hereinafter “Borge.”

Examiner Interview

Applicant requested an examiner interview in the instant case, but was denied an interview because the examiner of record is no longer employed by the PTO. As such, references below are made to the ‘previous’ examiner that entered the rejections of record.

35 U.S.C. § 103 Rejection

Independent claim 1 includes features that are patentable over the cited references, either taken alone or in combination, namely:

1. (Amended) An insulating material comprising a ***non-woven blend*** comprising a ***polyester filling fibre and a cellulosic fibre*** obtained by an organic spinning process, the material formed into a ***form selected from the group consisting of a padding, a stuffing, and a filling***. (emphasis added)

Snyder describes fiberballs for pillows and cushions. Snyder describes blending fibers that are mechanically different (Snyder c. 6, ll. 64-68). For example, Snyder describes blending a mechanically-crimped fiber with a low denier fiber. *Snyder does not disclose or suggest blending fibers of different composition.* In fact, Snyder discloses ***only one fiber composition*** - poly(ethylene terephthalate). “The invention is further described in the following Examples in which the fibers were *all made from poly(ethylene terephthalate)*.” (Snyder c. 8, ll. 54-56) The previous examiner seems to contend that the suggestion to blend mechanically different fibers is the same as a suggestion to blend fibers of different composition. In support of this proposition the previous examiner states that “terms are given their broadest reasonable interpretation and blend can mean a mixture of at least two components which the prior art of record encompasses.” Applicant is unsure whether the previous examiner is saying that ***claim terms*** are to be given their broadest reasonable

interpretation or whether *terms in cited references* are to be given their broadest reasonable interpretation.

If the previous examiner is arguing that claim terms are to be given their broadest reasonable interpretation, applicant agrees that *claim terms* are to be given their broadest meaning. Applicant notes, however, that the claims clearly recite a *blend* comprising a *polyester filling fibre and a cellulosic fibre*, not simply a blend of any two components. Snyder does not disclose or suggest blends of different materials, as described above.

If the previous examiner is arguing that terms in the cited references are to be given their broadest reasonable interpretation, applicant respectfully disagrees and submits that cited references may be relied on for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Labs.*, 874 F.2d 804, 10 USPQ2d 1843 (Fed Cir.), *cert. denied*, 493 US 975 (1989). This does not, however, mean that references can be relied on to disclose or suggest *non-disclosed embodiments*. As such, applicant respectfully submits that Snyder does not disclose or suggest blends of fibers of different materials.

A person having ordinary skill in the art would appreciate that the references in Snyder to “blends” of fibers relate to blends only of different deniers of polyester fibers and *makes no reference whatsoever to a blend of a polyester filling fiber and a cellulosic fiber*.

Reference is made, for example, to column 4, line 60 to 65 which refers to the “advantages in providing pillows, cushions and like articles of fiber balls from blends of such mechanically-crimped fiberfill with minor amounts of subdenier fibers or lower denier fibers.” The reference to “such mechanically-crimped fiberfill” refers back to the passage at column 4, lines 32 to 58 which refers to “mechanically crimping a tow band of polyester filaments.”

Further reference is made to column 5, line 7 to 10 which refers to “certain blends, using minor amounts of low denier fibers.” This is in the context of the aforementioned passage at column 4, lines 61 to 65 which discusses blends of mechanically crimped polyester filaments.

Further reference is made to column 8, lines 22 to 23 which states that “the polyester fibers used in the invention are desirably coated with a slickener.” Further reference is made to column 8, lines 34 to 56 which states that “the invention is further described in the

following Examples in which the fibers were all made from poly-(ethylene terephthalate).” A subsequent example then discusses blends of higher denier fibers and subdenier fibers *of the same material*. See, for example, column 9, lines 40 to 70 and, as a comparison, the reference at column 9, lines 32 to 33 to fiberfill that is made similarly, but from 100% of the higher denier fiber fills.

Moreover, in column 10, lines 15 to 17, reference is made to the preparation of “various blends” all of which are formed from higher denier fibers and subdenier fibers *of the same material* blended together in different proportions.

Thus, it is a completely untenable position for the previous examiner to infer that Synder even contemplates the possibility of blending fibers of different compositions and even more unfair to consider that Snyder had contemplated a non-woven blend comprising a polyester filling fiber and a cellulosic fiber obtained by an organic spinning process, as recited in claim 1. That is, the previous examiner is relying on an undisclosed embodiment that is not suggested.

It is perhaps worth reiterating at this stage that the choice of a cellulosic fiber such as lyocell goes against conventional teachings since such fibers were not normally associated with padding, stuffing, and filling at the filing date of this application, because such fibers tend to be flat.

Furthermore, it is very significant to note that when the two fibers (the polyester and the said cellulosic fiber) are blended, the resultant thermal efficiency is greater than the sum of the two components. In other words, the two fibers in the blend produce a synergistic and very unexpected effect which, it is respectfully submitted, strongly supports the contention that the claims are nonobvious over the cited references. See for example, application as originally filed at p. 1, l. 20 – p. 2, l. 8; p. 2, ll. 11-14; and p. 4, l. 3 – p. 7, l. 10.

Nor is there any suggestion or motivation for a person of ordinary skill in the art to combine the teachings of Snyder and Borge. Synder clearly refers to “fiber balls for filling uses in pillows, cushions and for like support purposes” (see, for example, column 1, lines 30 to 33, column 1, lines 36 to 39, column 1, line 51, column 1, line 59, column 2, lines 53 to 60, column 3, lines 37 to 44, column 3, lines 62 to 64, column 4, lines 61 to 64, column 5, lines 58 to 63, column 6, line 7, column 6, line 28, column 8, lines 30 to 36, column 11, lines 15 to 20, column 11, line 41).

In contrast, Borge relates to laminated articles. For example, reference is made to the following portion of Borge:

Column 1, line 1: "LAMINATED ARTICLE";

Column 1, line 5 : "This invention relates to laminated articles";

Column 1, line 7 to 8: "The invention further relates to a laminated fabric composition";

Column 1, lines 25 to 27: "The use of laminated fabrics for the preparation of wearing apparel and other textile articles has increased significantly in recent years";

Column 1, lines 52 to 55: "The unique advantages of laminated fabrics are maximized";

Column 1, lines 72 to 75: "A fabric having unproved thermal properties can be prepared by bonding an outer layer of a textile fabric to an inner layer of knitted fabric prepared from a spun yarn";

Column 2, line 3: "The outer layer of terephthlate; laminated article" (*sic*);

Column 2, lines 44 and 45: "The inner and outer layers of fabric";

Column 2, lines 61 to 63: "In the process of the this invention, the adhesive is preferably applied to portions only of the meetings surfaces of the fabrics to be laminated";

Column 2, lines 68 to 69: "The adhesive can be applied to one or both of the fabrics to be laminated";

Column 3, lines 17 to 18: "The laminated fabric is then passed into a drying unit";

Column 3, lines 46 to 49: "A 60-inch wide woven fabric ... is laminated to a 60-67 inch wide ...";

Column 3, lines 61 to 63: "A 60 inch wide ... fabric .,, is laminated to a 60 - 65 inch wide ...";

Column 4, lines 37 to 39: ""The laminated articles of this invention"; and

Claim 1, line 1: "A laminated article ...".

Finally, Snyder and Borge and clearly non-analogous art as their International Classification and US Classifications are completely distinct. Even their fields of search are distinct as shown in the following comparison chart.

Snyder
Int.Cl. D02G 3/00

Borge
B32b 7/14

D02G 1/00

D06m 17/00

US Cl. 428/359; 428/362; 428/369; 161/89, 72, 97, 98, 148, 175, 181;
428/370; 428/371; 428/373; 66/190; 2/46, 69; 156/290, 291.
428/374; 428/391; 428/395.

Therefore, Snyder and Borge are not properly combinable as they are non-analogous are. Further, a person skilled in the art of fillings would not seek to overcome any of the problems associated with Synder by looking to Borge because, quite simply, Borge does not discuss or contemplate the use of such materials as fillings. Indeed, even if the person skilled in the art were to look at Borge, he or she would be positively discouraged from using any of the teachings thereof, since the fabrics disclosed therein could not be used as the type of filling contemplated by Synder.

The previous examiner seems to be arguing that the references are combinable because there is "no defined structure for the fabric." As described above, however, fabric is defined as a "material resembling woven cloth." This does not include a *padding*, a *stuffing*, and a *filling*, as recited by the claims. Further, the specification of Borge clearly defines a structure for the fabric (Column 3, lines 46 to 49: "A 60-inch wide woven fabric ... is laminated to a 60-67 inch wide ..."; and Column 3, lines 61 to 63: "A 60 inch wide ... fabric .., is laminated to a 60 - 65 inch wide ...").

Thus, it is respectfully submitted that a person skilled in the art of fiber fillings would not be aware of, and would not look to, Borge to overcome any problems. Therefore, it is not appropriate to combine the teachings of the cited references and it is therefore respectfully submitted that the claims are not obvious in the light of the cited references.

Assuming *arguendo* that there is some motivation for combining the teachings of Snyder and Borge, the result would not be the claimed features. As discussed previously, Borge discloses, at most, a *layered fabric* formed from blends of different fibers. A hypothetical combination of Borge and Synder based on the teachings of those respective documents would therefore result in a casing formed from a laminated fabric of a blend of different types of fibers of Borge filled with the single material filling of Synder. This is very different from the claims. In any case, it is believed that a person skilled in the art would not even consider the two documents together, for the reasons stated above.

Finally, in response to the applicant's previous reply, the previous examiner responded by stating:

However, Borge teaches a blend. It would have been obvious to a person having ordinary skill in the art to utilize a blend of fibers in the invention of Snyder. Such a modification would have been motivated by the desire to utilize the benefits of multiple fiber types.

First, the previous examiner ignores the fact that Borge teaches a blend of materials in a fabric. Second, the previous examiner ignores the fact that Borge is directed to fabrics while Snyder is directed to fillings. Third, the previous examiner makes the blanket statement that the modification would have been motivated by the desire to utilize the benefits of multiple fibers types – without describing the benefits (and ignoring the unexpected results and benefits of the particular claimed blend). Moreover, the previous examiner's blanket statement would result in the untenable position that any and every combination of multiple fibers is unpatenable.

Accordingly, applicant submits that the cited references, either taken alone or in combination, do not render independent claim 1 as obvious. Additionally, inasmuch as dependent claims 2-12 (which have also been rejected over the cited references) are dependent on claim 1, these claims are patentable over the cited references, at least by virtue of their dependency. Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejections of claims 1-12 under 35 U.S.C. § 103.

Conclusion

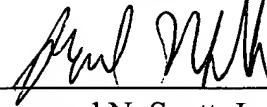
In view of the foregoing amendments and remarks, applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested. In the event that the current examiner cannot allow the present application for any reason, the current examiner is encouraged to contact the undersigned attorney, Raymond N. Scott Jr. at (215) 564-8951, to discuss resolution of any remaining issues.

DOCKET NO.: THOM-0007
Application No.: 09/308,515
Office Action Dated: June 17, 2004

Date: October 14, 2004

Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
Telephone: (215) 568-3100
Facsimile: (215) 568-3439

PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116



Raymond N. Scott, Jr.
Attorney for Applicant
Registration No. 48,666